

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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B.W. o/b/o K.S., a minor, and
T.S. o/b/o J.W., a minor,

Civil Action No.
09 Civ. 6686 (HBP)

Plaintiffs,

-against-

AFFIDAVIT OF ATTORNEY

NEW YORK CITY DEPARTMENT
OF EDUCATION,

Defendant.
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

MICHAEL D. HAMPDEN, being duly sworn, deposes and says:

1. I am an attorney with Partnership for Children's Rights ("PFCR"), attorneys for plaintiffs in this action. I make this affidavit in support of plaintiffs' application for an award of attorney's fees and costs incident to this district court action, as permitted by the Court in the concluding section of its Opinion and Order dated June 3, 2010.

2. All tasks in relation to this district court action were performed by myself and PFCR staff attorney Erin McCormack-Herbert, Esq. Our resumes are annexed hereto as Exhibit A. I attest that my annexed resume is true and accurate in all respects.

3. PFCR attorneys' hourly rates are specified in the organization's written attorney's fees policy, which is based on each attorney's years of legal practice. The applicable fee schedule for this action is set forth in the PFCR fee policy of March 31, 2008, which was in effect on the date that the first billable task was performed with respect to this action. (On September 9, 2009 PFCR's fee schedule was adjusted to

reflect an increase in prevailing rates; however, that later schedule is not being applied because it is PFCR's policy throughout a case to utilize the hourly rates in effect at the outset, even if increases take effect while the action is pending.) PFCR's March 31, 2008 attorney's fees policy utilized herein is annexed as Exhibit B.

4. Based on my 42 years of practice at the outset of this action, my hourly rate is \$395.00. Based on Ms. McCormack-Herbert's completion of three years of practice as of the beginning of this action, her hourly rate is \$275.00.

5. Annexed hereto as Exhibit C is the timesheet combining chronologically all tasks performed by myself and Ms. McCormack-Herbert. The timesheet details the date each task was performed, the hours for each task computed to tenths of an hour, a description of the work performed, the attorney's hourly rate under the PFCR policy, and the fees requested (hours multiplied by rate).

6. The timesheet is compiled from contemporaneous time records kept by Ms. McCormack-Herbert and myself during the course of this district court action.

7. With respect to my entries on the timesheet, I attest that I performed the legal tasks at the time and for the duration specified therein. The entries detailing tasks I performed are true and accurate, both as to the description of the tasks performed and the time I expended on each task. I recorded my time contemporaneously with the performance of each task.

8. Reasonable billing judgment was exercised with regard to all legal tasks performed. In the case of most conferences in which Ms. McCormack-Herbert and I both took part, duplication of tasks was avoided by indicating "No Charge" for one of the participants.

9. Attorney travel time has been billed at one-half the attorney's hourly rate, in accordance with settled law in this Circuit. Tasks performed by either attorney that are clerical in nature or could appropriately be performed by a paralegal assistant, are billed at the appropriate rate (\$50.00 for clerical tasks; \$100.00 for paralegal tasks). In accordance with the IDEA, § 1415(i)(3)(C), no bonus or multiplier was used in calculating the fees requested.

10. As detailed in the accompanying timesheet, plaintiffs request approval of an award of \$37,419.71 for this district court action. This total includes \$36,987.25 in attorney's fees and \$432.46 in costs.

11. A total of 124.6 hours were expended in the maintenance of this action. These include 96.2 hours for preparation of legal documents and correspondence including legal research, drafting, editing, proof-reading and cite-checking of legal documents; 3.6 hours for communications with the attorney for defendant by telephone, email or fax; 3.7 hours for in-office conferencing between or among PFCR attorneys; 6.0 hours for out-of-office tasks such as filing and serving papers, and pretrial conferencing at the Court; and 7.0 hours for essentially clerical and paralegal tasks (charged at clerical and paralegal rates).

12. Costs are billed for this action in the total amount of \$432.46. These include the district court filing fee (\$350.00), round-trip public transportation to court on three occasions (\$13.00), six reams of plain paper for exhibits in support of motion for summary judgment at \$3.60 per ream (\$21.60), and FedEx overnight mailing of motion for summary judgment and exhibits to defendant's attorney and the court (\$47.86).

13. Fees awarded are not payable to any individual PFCR staff person, but are used to strengthen the organization's capability to assist more disabled children in

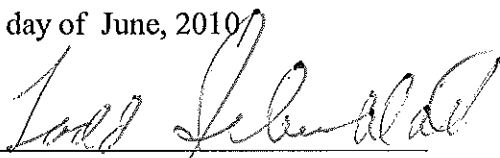
pursuing their urgent educational needs. PFCR is a charitable, not-for-profit corporation authorized by the Appellate Division of the Supreme Court of the State of New York to provide legal services without fee to low-income families in civil legal matters involving the rights of children, including children with disabilities seeking special education placements and services to which they may be entitled under the IDEA and state law. It is a means-based organization for families who would otherwise be financially unable to afford legal representation for their disabled children, and charges no attorney's fees to its clients. In addition to charitable giving and foundation grants, PFCR relies on the recovery of statutory attorney's fees allowed by federal law to provide operating revenue for the ongoing work of the organization.

WHEREFORE, for the reasons stated herein, in the accompanying affidavit of Erin McCormack-Herbert, Esq., in the accompanying Memorandum of Law, and in all the papers and proceedings herein, I respectfully request that the Court award reasonable attorney's fees and costs for PFCR's work incident to this district court action, in the total amount of \$37,419.71.



MICHAEL D. HAMPDEN

Sworn to before me this
25th day of June, 2010



Notary Public

TODD SILVERBLATT
NOTARY PUBLIC, State of New York
No. 02SI6058774
Qualified in Kings County
Commission Expires May 14, 2011

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SOUTHERN DISTRICT OF NEW YORK

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Plaintiffs,

-against-

AFFIDAVIT OF ATTORNEY

NEW YORK CITY DEPARTMENT
OF EDUCATION,

Defendant.
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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ERIN MCCORMACK-HERBERT, being duly sworn, deposes and says:

1. I am an attorney with Partnership for Children's Rights (PFCR), attorneys for plaintiffs in this action. I make this affidavit in support of plaintiffs' application for attorney's fees and costs in connection with this district court action.

2. I have personal knowledge of the facts set forth herein.

3. My resume, which I attest is true and complete in all respects, is annexed hereto in Exhibit A.

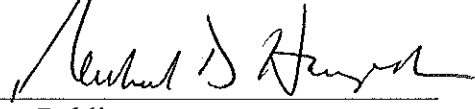
4. I performed legal tasks on behalf of plaintiffs in this action. I have reviewed the Attorney's Fees Timesheet annexed hereto as Exhibit C.

5. I performed the legal tasks in this case at the time and for the duration specified in the Attorney's Fees Timesheet. The entries therein detailing tasks I performed are true and accurate, both as to the description of the tasks performed and the

time I expended on each task. I recorded my time contemporaneously with the performance of each task.


ERIN MCCORMACK-HERBERT

Sworn to before me this
24th day of June, 2010


Notary Public

MICHAEL D. HAMPDEN
NOTARY PUBLIC, STATE OF NEW YORK
No. 4678628
Qualified in Westchester County
Commission Expires 10/31/10